

REMARKS

Applicants respectfully request reconsideration of this application in view of the following comments.

Claims 31, 32, 36-41 and 45-48 were rejected under 35 USC § 103(a) as being obvious over Allard et al. ("Allard"), U.S. Patent No. 5,616,331, in view of Kumano et al. ("Kumano"), J. Soc. Cosmet. Chem., 28: 285-314 (1977), or Robinson et al. ("Robinson"), U.S. Patent No. 5,306,485.

Claims 33-35 and 42-44 were rejected under Allard in view of either Kumano or Robinson, and further in view of either Billia et al. ("Billia"), U.S. Patent No. 5,486,353, or Robinson.

In response to *both* obviousness rejections, Applicants respectfully request that the Examiner reconsider and withdraw them.

The Examiner concedes that the primary reference, Allard, teaches oil-in-water emulsions, whereas the instant claims are drawn to water-in-oil emulsions. However, the Examiner finds that water-in-oil emulsions were known in the prior art, and also known to have certain advantages, as evidenced by Kumano or Robinson, and, therefore, persons skilled in the art would have been motivated to formulate Allard's oil-in-water emulsions as water-in-oil emulsions, and, thereby, achieve the present invention.

In response, Applicants submit that the cited combination of references does not make out a *prima facie* case of obviousness. As is clear from column 2, lines 4ff, Allard's invention is the solution of a problem that Allard describes as being peculiar to oil-in-water emulsions, namely undesired whiting of the skin by oil-in-water emulsions containing titanium dioxide nanopigments. The solution expressly involves providing "specific 'ultrafine' O/W emulsions." See, Allard at column 2, line 60. The secondary references simply show no more than was well known in the art—that water-in-oil

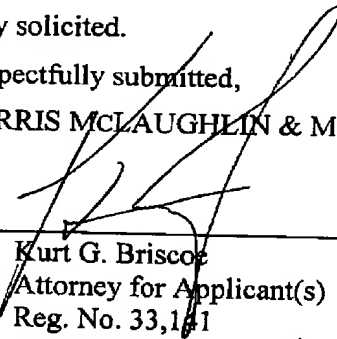
emulsions were also known. However, there is nothing in any of those secondary references that overcomes the fact that Allard is directed to oil-in-water emulsions, and to making improvements therein. There is absolutely nothing in the combination of Allard and the secondary references that would have led persons skilled in the art to ignore the fact that Allard was directed to oil-in-water emulsions, and to solving problems associated therewith, and to employ Allard's solution to such problems in the context of water-in-oil emulsions with a reasonable expectation of success.

The Examiner previously recognized the patentability of water-in-oil emulsions over Allard when she previously indicated that prior claim 30 was allowable in substance. See numbered paragraph 7 on page 3 of the Office Action dated April 8, 2003. Applicants submit that the Examiner's initial impression was correct, and water-in-oil emulsions, as presently claimed, are inventive over Allard in view of the cited prior art. An early notice to that effect is earnestly solicited.

Early and favorable action is earnestly solicited.

Respectfully submitted,
NORRIS MCLAUGHLIN & MARCUS, P.A.

By



Kurt G. Briscoe
Attorney for Applicant(s)
Reg. No. 33,141
875 Third Avenue - 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844